

1
2
3
4
5
6
7
8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 ROBIN ANBAR, an individual,
13 Plaintiff,
14 vs.
15 DEUTSCHE BANK NATIONAL
16 TRUST COMPANY, AS TRUSTEE;
17 ONEWEST BANK, FSB; INDYMAC
18 MORTGAGE SERVICES;
19 MERIDIAN FORECLOSURE
20 SERVICE F/K/A MTDS, INC., A
CALIFORNIA CORPORATION DBA
MERIDIAN TRUST DEED
SERVICE; AND DOES 1 THROUGH
50, INCLUSIVE,
Defendants.

CASE NO. 13cv1318-WQH-
RBB

ORDER

21 HAYES, Judge:

22 The matter before the Court is the Motion to Dismiss Plaintiff's Complaint, filed
23 by Defendants Deutsche Bank National Trust Company, as Trustee, OneWest Bank, FSB,
24 and IndyMac Mortgage Services. (ECF No. 18).

25 **I. Background**

26 On June 6, 2013, Plaintiff filed a Complaint in this Court. (ECF No. 1). Plaintiff
27 alleges that she is the owner of real property located at 1819 Autumn Place, Encinitas,
28 California, which is encumbered by a Mortgage Note with an outstanding balance of

1 approximately \$557,750. The Complaint alleges that “Plaintiff does not dispute that
 2 money is owed on the mortgage obligation,” but “Plaintiff disputes the amount owed, and
 3 seeks the Court’s assistance in determining who the holder in due course is of the Note
 4 and Deed of Trust.” *Id.* ¶ 30. The Complaint alleges the following claims for relief: (1)
 5 Declaratory Relief; (2) Quasi Contract; (3) Negligence; (4) Violation of 15 U.S.C. §1692,
 6 *et seq.*; (5) Violation of California Business and Professions Code Section 17200, *et seq.*;
 7 (6) Accounting; (7) Cancellation of Instruments; and (8) Quiet Title. The Complaint
 8 alleges that the Court has federal-question subject-matter jurisdiction.¹

9 On August 13, 2013, Defendant Meridian Foreclosure Service filed a Declaration
 10 of Nonmonetary Status. (ECF No. 16). The docket reflects that Plaintiff did not file an
 11 objection or other response to the Declaration of Nonmonetary Status.²

12 On August 22, 2013, all other Defendants filed the Motion to Dismiss the
 13 Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF No. 18). On
 14 September 16, 2013, Plaintiff filed an opposition to the Motion to Dismiss, contending
 15 that the Motion to Dismiss should be denied or Plaintiff should be given leave to amend
 16 the Complaint. (ECF No. 21). On September 23, 2013, Defendants filed a reply. (ECF

17
 18 ¹ The Complaint alleges that subject-matter jurisdiction also exists pursuant to
 19 the diversity statute. *See* 28 U.S.C. § 1332(a) (stating that, to invoke diversity
 20 jurisdiction, the complaint must allege that “the matter in controversy exceeds the sum
 21 or value of \$75,000, exclusive of interest and costs, and is between ... citizens of
 22 different States ... [or] citizens of a State and citizens or subjects of a foreign
 23 state....”). However, the Complaint fails to adequately allege that complete diversity
 24 exists between the parties. *See* Compl., ECF No. 1, ¶¶ 9 (alleging that “Plaintiff is
 25 now, and at all times mentioned herein an individual residing in the County of San
 26 Diego”), 10 (alleging that “[a]t all relevant times Defendant Deutsche is a corporation
 27 domiciled in the State of California”), 11 (alleging that “[a]t all relevant times
 28 Defendant OneWest is a corporation domiciled in the State of California”), 12
 (alleging that “[a]t all relevant times Defendant IndyMac is a division of OneWest and
 is domiciled in the State of California”), & 13 (alleging that “[a]t all relevant times
 Defendant Meridian is a corporation domiciled in the State of Nevada and
 California”).

26 ² California Civil Code Section 2924l permits a trustee to declare non-monetary
 27 status if the trustee “maintains a reasonable belief that it has been named in the action
 28 or proceeding solely in its capacity as trustee, and not arising out of any wrongful acts
 or omissions on its part in the performance of its duties as trustee.” Cal. Civ. Code §
 2929l(a). If there is no objection to the declaration within 15 days of filing, the trustee
 gains non-monetary status. *See* Cal. Civ. Code § 2929l(d).

1 No. 22).

2 **II. Discussion**

3 **A. Standard of Review**

4 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to state a
5 claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Federal Rule of Civil
6 Procedure 8(a) provides that “[a] pleading that states a claim for relief must contain ... a
7 short and plain statement of the claim showing that the pleader is entitled to relief.” Fed.
8 R. Civ. P. 8(a)(2). Dismissal under Rule 12(b)(6) is appropriate where the complaint
9 lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.
10 *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

11 A plaintiff’s “grounds” to relief must contain “more than labels and conclusions,
12 and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl.*
13 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P. 8(a)(2)). When
14 considering a motion to dismiss, a court must accept as true all “well-pleaded factual
15 allegations.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). However, a court is not
16 “required to accept as true allegations that are merely conclusory, unwarranted deductions
17 of fact, or unreasonable inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979,
18 988 (9th Cir. 2001). “In sum, for a complaint to survive a motion to dismiss, the
19 non-conclusory factual content, and reasonable inferences from that content, must be
20 plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret*
21 *Service*, 572 F.3d 962, 969 (9th Cir. 2009) (quotations omitted).

22 **B. Fair Debt Collection Practices Act**

23 The Complaint’s fourth cause of action alleges Defendants violated the Fair Debt
24 Collection Practices Act (“FDCPA”), 15 U.S.C. §1692, *et seq.* The Complaint alleges
25 that “Deutsche/OneWest/IndyMac” violated the FDCPA when they “attempt[ed] to
26 collect on Plaintiff’s debt obligation” by “[f]alsely representing ... that the debt was
27 owing to Defendants or its principal, ... when in fact, such an assignment had not been
28 accomplished.” (ECF No. 1 ¶ 120). Defendants move for the dismissal of the FDCPA

1 claim, contending that “Plaintiff has not and cannot allege facts demonstrating that
 2 Defendants are ‘debt collectors’ as defined by the FDCPA.” (ECF No. 19 at 21).
 3 Plaintiff contends that the FDCPA is applicable to Defendants, because Defendants are
 4 not lenders. (ECF No. 21-1 at 24).

5 “To be held liable for violation of the FDCPA, a defendant must—as a threshold
 6 requirement—fall within the Act’s definition of ‘debt collector.’” *Izenberg v. ETS Servs.,*
 7 *LLC*, 589 F. Supp. 2d 1193, 1198 (C.D. Cal. 2008) (citing *Heintz v. Jenkins*, 514 U.S.
 8 291, 294 (1995)). The FDCPA defines a “debt collector” as “a person who uses any
 9 instrumentality of interstate commerce or the mails in any business the principal purpose
 10 of which is the collection of any debts, or who regularly collects or attempts to collect,
 11 directly or indirectly, debts owed or due or asserted to be owed or due another.” 15
 12 U.S.C. § 1692a. The definition explicitly excludes creditors as well as loan originators
 13 or assignees who obtained the right to collect on loan when the loan was not in default.
 14 *See* 15 U.S.C. § 1692a(4), § 1692a(6)(A)-(B), § 1692a(ii)-(iii). “The law is well-settled
 15 that creditors, mortgagors, and mortgage servicing companies are not debt collectors and
 16 are statutorily exempt from liability under the FDCPA.” *Aguirre v. Cal-Western*
 17 *Reconveyance Corp.*, No. CV-11-6911, 2012 WL 273753, at *7 (C.D. Cal. Jan. 30, 2012)
 18 (quotation omitted). Similarly, “foreclosing on a property pursuant to a deed of trust is
 19 not the collection of a debt within the meaning of the FDCPA.” *Izenberg*, 589 F. Supp.
 20 2d at 1199 (quotation omitted); *see also Reed v. Wells Fargo Home Mortg. Inc.*, No.
 21 10-2133, 2010 WL 5136196, at *7 (E.D. Cal. Dec. 10, 2010) (“The activity of foreclosing
 22 on a property pursuant to a deed of trust is not the collection of a debt within the meaning
 23 of the FDCPA....”) (quotation omitted).

24 The Complaint fails to adequately allege that any Defendant is a “debt collector”
 25 pursuant to the FDCPA. The Motion to Dismiss the cause of action for violation of the
 26 FDCPA is granted.

27 **C. Remaining Claims**

28 The Complaint alleges six claims pursuant to state law and one claim pursuant to

1 the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202. “[T]he Declaratory Judgment
 2 Act does not by itself confer federal subject-matter jurisdiction.” *Nationwide Mut. Ins.*
 3 *Co. v. Liberatore*, 408 F.3d 1158, 1161 (9th Cir. 2005). As discussed above, the
 4 Complaint fails to adequately allege that the Court has diversity subject-matter
 5 jurisdiction. After the dismissal of the FDCPA claim, the sole basis for the Court to
 6 maintain jurisdiction over the remaining claims is pursuant to supplemental jurisdiction.

7 The supplemental jurisdiction statute provides: “[I]n any civil action of which the
 8 district courts have original jurisdiction, the district courts shall have supplemental
 9 jurisdiction over all other claims that are so related to claims in the action within such
 10 original jurisdiction that they form part of the same case or controversy under Article III
 11 of the United States Constitution.” 28 U.S.C. § 1367(a). A district court may decline to
 12 exercise supplemental jurisdiction over a claim if:

- 13 (1) the claim raises a novel or complex issue of State law,
- 14 (2) the claim substantially predominates over the claim or claims over which
 15 the district court has original jurisdiction,
- 16 (3) the district court has dismissed all claims over which it has original
 jurisdiction, or
- 17 (4) in exceptional circumstances, there are other compelling reasons for
 18 declining jurisdiction.


19 28 U.S.C. §1367(c). In this case, the Court has dismissed the sole claim against
 20 Defendants which is capable of conferring federal-question jurisdiction. The Court
 21 declines to exercise supplemental jurisdiction over the remaining claims against
 22 Defendants pursuant to 28 U.S.C. §1367(c). *See Ove v. Gwinn*, 264 F.3d 817, 826 (9th
 23 Cir. 2001) (“A court may decline to exercise supplemental jurisdiction over related
 24 state-law claims once it has dismissed all claims over which it has original jurisdiction.”).
 25 Accordingly, the Motion to Dismiss the remaining claims is granted.

26 **III. Conclusion**

27 IT IS HEREBY ORDERED that the Motion to Dismiss Plaintiff’s Complaint is
 28 GRANTED. (ECF No. 18). The Complaint is DISMISSED without prejudice. No later
 than twenty (20) days from the date this Order is filed, Plaintiff may file a motion for

1 leave to amend the complaint, accompanied by a proposed first amended complaint. If
2 Plaintiff does not file a motion for leave to amend the complaint within twenty days, this
3 case shall remain closed without further order of the Court.

4 DATED: November 4, 2013

5 
6 **WILLIAM Q. HAYES**
7 United States District Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28